



Department of Pesticide Regulation

Brian R. Leahy
Director



Edmund G. Brown Jr.
Governor

January 27, 2015

Sent via U.S. Regular Mail

Mr. Kirk Shermer
Snowden Enterprises, Inc.
3257 East Central Avenue
Fresno, California 93712-0751

Subject: Unlawful Pesticide Sales – POE 2014/15-68

Dear Mr. Shermer:

Thank you for taking the time to speak with me about the above-referenced matter. As we discussed during our telephone conference, the Department of Pesticide Regulation's (DPR) recent routine audit revealed that during the time period of January 1, 2011 (Q1 2011) through August 4, 2014 (Q4 2014), Snowden Enterprises, Inc. (Snowden) made unlawful sales/deliveries into or within California of the following pesticide:

➤ **The Fruit Doctor; CA Reg. No. 11195-1-AA**

DPR reviews and registers pesticide products to ensure the product will be safe for California's people and the environment when used as directed. (Cal. Code Regs., tit. 3, § 6158.) A pesticide is misbranded if the pesticide's market label does not conform to its DPR-registered label. (Food & Agr. Code, § 12882, subd. (d).) The Fruit Doctor is misbranded because its market label includes additional "Sulfur Dioxide Fumigation Use Instructions," (hereinafter referred to as "Fumigation Instructions"), which are not included on the most recent DPR-registered label.

Under section 12992 of the Food and Agricultural Code, it is unlawful to make sales/deliveries into or within California of a misbranded pesticide. As The Fruit Doctor is misbranded, all sales/deliveries of this pesticide into or within California are unlawful.

Each unlawful sale/delivery can be subject to a fine up to \$10,000 if civilly prosecuted under Food and Agricultural Code section 12998. Alternatively, in lieu of civil prosecution, each unlawful sale/delivery can be subject to an administrative penalty up to \$5,000 under section 12999.4.

Nonetheless, DPR's policy is to pursue settlement possibilities in cases where the company did not act in bad faith and fully cooperates in our investigation. DPR's standard settlement amount for companies that fully cooperate and with annual pesticide sales over \$2,500 is thirty (30)



percent of unlawful sales. In this case, DPR's standard settlement amount would be [REDACTED].

However, our correspondence revealed several mitigating factors pertinent to this matter. First, Snowden promptly and voluntarily removed the additional Fumigation Instructions from The Fruit Doctor's market label upon learning that The Fruit Doctor was misbranded. Moreover, Snowden has been and is currently working with U.S. EPA to register a revised version of The Fruit Doctor's label that will incorporate the Fumigation Instructions. These are mitigating factors because they demonstrate Snowden's good faith intent to comply with the California Food and Agricultural Code and address DPR's interest in deterring future noncompliance.

Second, the additional Fumigation Instructions are not only consistent with the most-recent DPR-registered label for The Fruit Doctor; they provide more specific instructions than The Fruit Doctor's most-recent DPR-registered label. While this does not excuse Snowden's Food and Agricultural Code violations, this is a mitigating factor because the additional Fumigation Instructions complement DPR's interest in ensuring pesticides are safe for California's people when used as directed.

Finally, despite references to additional Fumigation Instructions on the DPR-registered label, DPR did not request to review or register the additional Fumigation Instructions during its initial or subsequent reviews of The Fruit Doctor's label. DPR's failure to request the additional Fumigation Instructions again does not excuse Snowden's unlawful pesticide sales. However, it is a mitigating factor because DPR should have requested a copy of the additional Fumigation Instructions to review.

In consideration of the mitigating factors discussed above, DPR is offering to settle Snowden's unlawful pesticide sales for the following:

Pesticide	Quarters in Violation	Settlement Amount
The Fruit Doctor	10 Quarters ¹	\$7,500 Per Quarter In Violation
TOTAL		\$75,000.00

This settlement offer is very fair; particularly considering DPR's standard settlement amount would be \$1,557,714.45. In addition, should we be unable to resolve this matter via settlement,

¹ DPR is not considering the quarters where Snowden reported negative sales as quarters in violation. In addition, DPR is not considering Q3 2014 or Q4 2014 as quarters in violation because Snowden removed the additional Fumigation Instructions from The Fruit Doctor's market label halfway through Q3 2014.

Snowden Enterprises, Inc.

January 27, 2015

Page 3

each and every unlawful sale of The Fruit Doctor could be subject to a \$5,000 administrative penalty. (Food & Agr. Code, § 12999.4.)

If Snowden would like to settle this matter without the need for a formal enforcement proceeding, please have an authorized company representative sign the enclosed settlement agreement and return it to me, along with a company check for **\$75,000.00 by February 28, 2015**. If I do not receive the signed settlement agreement by February 28, 2015, or I do not otherwise hear from you, this settlement offer may be withdrawn and enforcement proceedings commenced without further notice.

Please contact me should you have any questions and thank you for your anticipated cooperation in resolving this matter.

Sincerely,



Ms. Drew Saruwatari, Staff Attorney
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(916) 324-2666

cc: Ms. Donna Marciano, Product Compliance Branch Chief
Reference # AUD 13/14-33